



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R1-ES-2022-0068]; [FXES11140100000-223-FF01E00000]

Notice of Intent to Prepare an Environmental Impact Statement for the Kauai Island Utility Cooperative Habitat Conservation Plan, Kauai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; virtual public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide this notice to announce that the Kauai Island Utility Cooperative (KIUC) is preparing a habitat conservation plan (HCP) in support of its anticipated application for an incidental take permit (ITP) under the Endangered Species Act for activities it would undertake in managing existing and future powerlines and lighting. We intend to prepare an environmental impact statement to evaluate the effects on the human environment related to this request, and on any potential issuance of an ITP and implementation of the HCP. In accordance with the National Environmental Policy Act, we are opening a public scoping period and announcing a virtual public scoping meeting. In 2016, we published a notice of intent to prepare an EIS. Any comments submitted then do not need to be resubmitted, as they will be reconsidered.

DATES: *Submitting Comments:* We will accept online or hardcopy comments.

Comments submitted online at <https://www.regulations.gov/> must be received by 11:59 p.m. Eastern Time on **[INSERT DATE 30 DAYS AFTER THE DATE OF**

PUBLICATION IN THE *FEDERAL REGISTER*]. Hardcopy comments must be received or postmarked on or before **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** (see **ADDRESSES**).

Virtual Public Scoping Meeting: The Service will hold one public meeting during the scoping period. To help protect the public and limit the spread of the COVID-19 virus, the public meeting will be held on:

- June 28, 2022 from 5 p.m. to 7 p.m. Hawaii Standard Time.

ADDRESSES:

Submitting Comments: You may submit comments by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R1-ES-2022-0068.
- *U.S. Mail:* Public Comments Processing; Attn: Docket No. FWS-R1-ES-2022-0068; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

For additional information about submitting comments, see **SUPPLEMENTARY INFORMATION**.

Virtual Public Scoping Meeting: A link and access instructions for the virtual scoping meeting will be posted to <https://www.fws.gov/pacificislands/> at least one week prior to the public meeting dates.

FOR FURTHER INFORMATION CONTACT: Koa Matsuoka, Pacific Islands Fish and Wildlife Office, by telephone at 808-792-9417 or by email at KIUCLongTermhcp@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), provide this notice to announce that the Kauai Island Utility Cooperative (KIUC) is preparing a habitat conservation plan (HCP) in support of its anticipated

application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), for activities it would propose to undertake in managing existing and future powerlines and lighting. We intend to prepare an environmental impact statement (EIS) to evaluate the effects on the human environment related to this request, and on any potential issuance of an ITP and implementation of the HCP. In accordance with the National Environmental Policy Act and its implementing regulations (42 U.S.C. 4321 *et seq.*), we are opening a public scoping period and announcing a virtual public scoping meeting.

We previously published a notice of intent to prepare an EIS on July 7, 2016 (81 FR 44316) and opened a scoping period through September 6, 2016. KIUC used the public comments received during that period to revise and further develop an HCP. This new notice opens a new public scoping period based on the addition of new information, including adding six covered species to the HCP, and the anticipation of receiving an application from KIUC. Comments received in writing during the 2016 public comment period were retained, and do not need be provided again during this public comment period to be considered during this review.

Purpose and Need for the Proposed Action

In accordance with section 10(a)(2)(A) of the ESA, the KIUC intends to submit the draft Kauai Island Utility Cooperative Habitat Conservation Plan (KIUC HCP) to us in support of their incidental take permit (ITP) application for the following endangered species:

- Hawaiian petrel (‘ua‘u in Hawaiian, *Pterodroma sandwichensis*)
- Hawaii Distinct Population Segment of band-rumped storm-petrel (‘akē‘akē in Hawaiian, *Oceanodroma castro*)
- Hawaiian duck (koloa maoli in Hawaiian, *Anas wyvilliana*)
- Hawaiian stilt (ae‘o in Hawaiian, *Himantopus mexicanus knudseni*)

- Hawaiian coot (‘alae ke‘oke‘o in Hawaiian, *Fulica alai*)
- Hawaiian gallinule (‘alae ‘ula in Hawaiian, *Gallinula chloropus sandvicensis*).

The following threatened species are expected to be included in the HCP and application as well:

- Newell’s shearwater (‘a‘o in Hawaiian, *Puffinus auricularis newelli*)
- Hawaiian goose (nēnē in Hawaiian, *Branta sandvicensis*)
- Central North Pacific distinct population segment of green sea turtle (honu in Hawaiian, *Chelonia mydas*)

The requested ITP, if granted, would authorize incidental take of the covered species caused by KIUC’s operation and maintenance of existing and future KIUC facilities, and the implementation of a conservation strategy to minimize and mitigate the impact of the taking to the covered species.

To meet our requirements under the National Environmental Policy Act (NEPA); 42 U.S.C. 4321 *et seq.*) and its implementing regulations, we intend to prepare a draft environmental impact statement (DEIS) and, later, a final environmental impact statement (FEIS), to evaluate the effects on the human environment of issuing the requested permit and KIUC’s implementation of its HCP. The Service’s purpose and need for the proposed action is to (1) process the applicant’s request for an ITP and (2) either grant, grant with conditions, or deny the ITP request in compliance with the Service’s authority under applicable law, including, without limitation, section 10(a)(1)(B) of the ESA and applicable ESA implementing regulations.

Preliminary Proposed Action and Alternatives

Consistent with 40 CFR 1501.9(d)(2), the preliminary description of the proposed action is issuance of an ITP authorizing incidental take of covered species in association with covered activities and HCP implementation. The DEIS will include a reasonable range of alternatives, including but not limited to variations in the level of permitted take,

the length of the permit term, conservation minimization and mitigation measures, and implementation and effectiveness monitoring. Additionally, a No Action Alternative will be included, in which the Service would not issue an ITP. For analysis purposes, the Service would assume that KIUC would operate and maintain existing and future powerlines and lighting in accordance with current practice, which includes implementation of take avoidance and minimization measures, but no mitigation offset for any continued unauthorized take. Under this alternative, any incidental take of covered species would not be authorized, and KIUC would assume all legal liability for operating without an ITP. Unauthorized take would continue to occur, and the effects would not be mitigated.

Background

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered under section 4 (see 16 U.S.C. 1538 and 16 U.S.C. 1533). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulation as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits authorizing incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains criteria for issuing ITPs to non-Federal

entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Kauai Island Utility Cooperative Habitat Conservation Plan

KIUC intends to implement the KIUC HCP to cover activities including continued operation, maintenance, and retrofit of existing structures and facilities; operation and maintenance of certain future KIUC structures and facilities; and the implementation of a conservation strategy within the full geographic extent of the island of Kauai (plan area). KIUC provides and ensures the availability of electrical service to 34,000 of its ratepayers on the Island of Kaua'i. The KIUC HCP would include a conservation strategy with measures to minimize and mitigate the impact of the taking to covered species. We expect KIUC to request an ITP for a 30-year permit term.

Covered Activities

The proposed covered activities will include:

- Continued operation, maintenance and retrofit of existing powerlines and lighting at certain facilities. Powerlines include transmission, distribution, and communication wires and supporting structures such as poles, towers, lattice structures, and H-frames. Lighting includes streetlights and exterior building

lights at two KIUC facilities (Port Allen Generating Station and the Kapaia Generating Station).

- Operation and maintenance of future powerlines and lighting.
- Implementation of measures associated with KIUC's conservation strategy that may result in short-term effects to covered species (e.g., installation and maintenance of predator-proof fences and implementation of predator removal activities).

Covered Species

The species proposed for coverage under the KIUC HCP include the following threatened and endangered seabirds, threatened and endangered waterbirds, and the threatened Central North Pacific distinct population segment (CNPDPS) of the green sea turtle. The species are listed below:

- Newell's shearwater, Hawaiian petrel, and band-rumped storm-petrel;
- Hawaiian duck, Hawaiian stilt, Hawaiian coot, Hawaiian gallinule, and Hawaiian goose; and
- CNPDPS of the green sea turtle.

The proposed HCP identifies take of covered seabirds associated with powerline collisions and fallout caused by artificial nighttime lighting from streetlights and buildings. Take of covered waterbirds is primarily associated with powerline collisions. Artificial nighttime lighting from streetlights also results in take of green sea turtle nestlings that become disoriented after hatching on natal beaches.

Summary of Expected Impacts

The DEIS will identify and describe the effects of the proposed Federal action on the human environment that are reasonably foreseeable, including direct, indirect, and cumulative effects. This includes effects that occur at the same time and place as the proposed action or alternatives and/or effects that are later in time or farther removed in

distance from the proposed action or alternatives. Expected impacts may include, but are not limited to, positive and negative impacts to the covered species and other biological resources, health and safety, aesthetics, historical and cultural resources, public services and utilities, and socioeconomics. While all reasonably foreseeable potential impacts to the human environment will be considered for the proposed action and alternatives, we expect powerline and lighting operation and maintenance to primarily impact covered species and other biological resources, aesthetics, and public services and utilities. Similarly, implementation of KIUC's proposed conservation strategy may specifically impact soils and geology, land use, and aesthetics, in addition to covered species and other biological resources. The effects of these expected impacts will be analyzed in the EIS (see 40 CFR 1508.1(g) and 40 CFR 1502.16).

Anticipating impacts to cultural and historical resources from HCP implementation, KIUC initiated outreach for the cultural impact assessment process under Hawaii Revised Statutes, chapter 6E. Seventy-four individuals knowledgeable about cultural resources and practices on the Island of Kauai were contacted, and seven responded. Information from this outreach, together with other information available to the Service, will be used to assess potential impacts on cultural resources of implementing the KIUC HCP.

Anticipated Permits and Authorizations

Anticipated permits and authorizations include, but may not be limited to the following:

- ESA Section 7 consultation;
- Hawaii Environmental Policy Act;
- Hawaii Revised Statutes chapter 195D (State of Hawaii endangered species laws);
- Migratory Bird Treaty Act;
- National Historic Preservation Act; and

- Other State and local permits and authorizations.

Related Actions

KIUC Short-Term Habitat Conservation Plan

In 2011, the Service approved the KIUC Short-Term Habitat Conservation Plan (STHCP), and issued an ITP to authorize take for three seabird species (Newell's shearwater, Hawaiian petrel, and band-rumped storm-petrel). The ITP provided KIUC with take coverage for seabird collisions with KIUC-owned powerlines and utility infrastructure, and fallout from nighttime lighting attraction to KIUC-operated streetlights and facilities. Additionally, the STHCP established a comprehensive monitoring and research program designed to further evaluate the impact of the powerline system on seabird populations and to provide key biological data to more adequately inform the longer term HCP and take authorization. The ITP for the STHCP expired in May, 2016, but the monitoring and research program was successful in guiding measures that KIUC has since implemented to minimize and mitigate the effects of its existing facilities on the covered species; increasing knowledge related to the impact of KIUC's powerline system on seabird populations; providing key biological data concerning the covered species; and improving our understanding of the effectiveness of conservation measures to more adequately inform the longer term habitat conservation plan currently under development and potential take authorization.

Kauai Seabird HCP

In 2020, the Service authorized an ITP for the State of Hawaii sponsored Kauai Seabird HCP (KSHCP) to cover take of the Newell's shearwater, Hawaiian petrel, and the band-rumped storm-petrel from attraction to lighting on the Island of Kauai. We provided ITPs to eight separate entities participating in the HCP. KIUC did not participate because of their need to obtain additional take coverage for the operation and maintenance of powerlines.

Schedule for the Decision-Making Process

The Service will analyze the effects of the proposed permit action, along with other alternatives considered and the associated impacts of each alternative for the development of the DEIS. Following completion of this analysis, the Service will publish a notice of availability and request for public comments on the DEIS and the draft HCP submitted with the ITP application. The Service expects to make the DEIS and the applicant's draft HCP available for public review and comment in Winter 2022. After public review and comment, we will revise the DEIS as appropriate, and publish an FEIS. We will also assess the effects of Service ITP issuance through the ESA section 7 ESA consultation process. The Service expects to make the FEIS and final HCP available to the public in Fall 2023. In accordance with 40 CFR 1506.11, no sooner than 30 days after the FEIS is published, the record of decision (ROD) will be completed. If issued, a permit may include such terms and conditions deemed necessary or appropriate to carry out the purposes of the permit and the conservation plan.

Public Scoping Process

Virtual Public Meeting

This notice of intent initiates the public scoping process, which guides the development of the EIS.

To help protect the public and limit the spread of the COVID-19 virus, the public scoping meeting will be conducted online to accommodate best practices and local guidelines in place at the time this notice was prepared. See **DATES** and **ADDRESSES** for the date, time, and connection information for the virtual public scoping meeting. The meeting will provide KIUC and the Service an opportunity to present to the public information pertinent to the KIUC HCP, and for the public to ask questions on the scope of issues and alternatives the Service should consider when preparing the EIS. No

opportunity for oral comments will be provided. Written comments may be submitted by either one of the methods listed in **DATES** and **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the virtual public scoping meeting should contact the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) no later than 1 week before the scheduled meeting. Information regarding this proposed action is available in alternative formats upon request.

Request for Information

We request comments on the proposed action and alternatives, concerning the scope of the analysis and identification of relevant information, studies, and analyses from the public; other governmental agencies; the scientific community; Native Hawaiian organizations or entities; industry; or any other interested party. We will consider these comments in developing the DEIS. Specifically, we seek:

1. Biological information and relevant data concerning the covered species and other wildlife;
2. Additional information concerning the range, distribution, population size, and population trends of the covered species;
3. Potential effects that the proposed permit action could have on the covered species, and other endangered or threatened species, and their associated ecological communities or habitats;
4. Potential effects that the proposed permit action could have on other aspects of the human environment, including ecological, aesthetic, historic, cultural, economic, social, environmental justice, or health effects;

5. Other possible reasonable alternatives to the proposed permit action that the Service should consider, including additional or alternative avoidance, minimization, and mitigation measures;
6. The presence of historic and cultural properties—including archaeological sites, buildings, and structures; historic events; sacred and traditional areas; and other historic preservation concerns—in the proposed permit area, which are required to be considered in project planning by the National Historic Preservation Act;
7. Information on other current or planned activities in, or in the vicinity of, the Island of Kauai and their possible impacts on the covered species, including any connected actions that are closely related and should be discussed in the same DEIS; and
8. Other information relevant to the KIUC HCP and its impacts on the human environment.

Comments received in writing during the 2016 public comment period were retained, and do not need be provided again during this public comment period to be considered during this review.

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection online in Docket No. FWS-R1-ES-2022-0068 at <https://www.regulations.gov/>.

Next Steps

Once the DEIS is prepared, there will be further opportunity for comment on this proposed permit action through an additional public comment period.

Decision Maker and Nature of Decision to be Made

The decision maker is the Service's Regional Director of the Pacific Region. If, after publication of the record of decision, we determine that all requirements are met for ITP issuance, the Regional Director will issue a decision on the requested ITP.

Authority

We provide this notice in accordance with the NEPA regulations found at 40 CFR 1501.9(d).

Nanette Seto,
Acting Deputy Regional Director,
U.S. Fish and Wildlife Service.